



## DEPARTMENT OF ENERGY

### Draft Supplemental Environmental Impact Statement for the Long-Term Management and Storage of Elemental Mercury

**AGENCY:** Office of Environmental Management, Department of Energy.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Department of Energy (DOE) announces the availability of the second Draft Long-Term Management and Storage of Elemental Mercury Supplemental Environmental Impact Statement (Draft Mercury Storage SEIS-II, DOE/EIS-0423-S2D) for public comment.

As required by the *Mercury Export Ban Act of 2008* and the 2016 *Frank R. Lautenberg Chemical Safety for the 21st Century Act* (all together referred to as MEBA), DOE proposes to identify an existing facility or facilities for the long-term management and storage of elemental mercury generated within the United States. To this end, DOE issued the *Final Environmental Impact Statement for the Long-Term Management and Storage of Elemental Mercury* (Mercury Storage EIS, DOE/EIS-0423, January 2011) and the first *Final Long-Term Management and Storage of Elemental Mercury Supplemental Environmental Impact Statement* (Mercury Storage SEIS, DOE/ EIS-0423-S1, September 2013), which analyzed reasonable alternatives, in accordance with the *National Environmental Policy Act* (NEPA), for locating and developing such a facility. On May 24, 2021, DOE announced its intent to prepare a second supplement to the Mercury Storage EIS to update these previous analyses of potential environmental impacts and analyze additional alternatives, in accordance with NEPA.

**DATES:** DOE invites public comment on this Draft Mercury Storage SEIS-II during a 45-day public comment period, which commences with the publication of this Notice in the *Federal Register* and continues until **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. In preparing the Final Mercury Storage SEIS-II, DOE will consider all comments received by that date. Comments received after that date will be

considered to the extent practicable. DOE will hold two web-based public hearings via Zoom. The hearings will cover the same material. The first hearing will be held on August 2, 2022, from 12:00 p.m. to 2:00 p.m. EDT. The second hearing will be held on August 4, 2022, from 1:00 p.m. to 3:00 p.m. EDT. See Section V, “Public Participation,” for further information on the public comment process and the web-based hearings.

**ADDRESSES:** Additional information regarding the SEIS-II, the 2011 Mercury Storage EIS, 2013 Mercury Storage SEIS, and other related documents is available online at:

*<https://www.energy.gov/nepa/doeis-0423-s2-supplemental-environmental-impact-statement-long-term-management-and-storage>*. Please direct written comments or questions on the Draft Mercury Storage SEIS-II using one of the following methods:

- *Zoom Hearing Room* (during the scheduled dates); details regarding the web-based public hearing are provided in Section V, “Public Participation.”  
*<https://em-doe.zoomgov.com/j/1608025687?pwd=Zndsbkp6THA4V2lFdXE3ZGExclF6Zz09>*  
(copy and paste into web browser).
- *Email: [ElementalMercury\\_NEPA@em.doe.gov](mailto:ElementalMercury_NEPA@em.doe.gov)*. Please submit comments as an email message or email attachment (*i.e.*, Microsoft Word or PDF file format) without encryption.
- *Postal mail:* Please submit comments by U.S. Mail to Ms. Julia Donkin, NEPA Document Manager, Office of Environmental Management, U.S. Department of Energy, EM-4.22, 1000 Independence Avenue SW, Washington, DC 20585.

The Draft Mercury Storage SEIS-II is available at: *<https://www.energy.gov/nepa/doeis-0423-s2-supplemental-environmental-impact-statement-long-term-management-and-storage>*.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning the Draft Mercury Storage SEIS-II or the public hearing can be sent to Ms. Julia Donkin, NEPA Document Manager, Office of Environmental Management, U.S. Department of Energy, EM-4.22, 1000

Independence Avenue SW, Washington, DC 20585, (202) 586-5000, or to *Julia.Donkin@em.doe.gov*. Direct questions specific to DOE's elemental mercury program to Mr. David Haught, Mercury Program Manager, Office of Environmental Management, U.S. Department of Energy, EM-4.22, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586-5000, or to *David.Haught@hq.doe.gov*.

For general information concerning the DOE Office of Environmental Management NEPA process, please contact Mr. William Ostrum, Office of Environmental Management NEPA Compliance Officer, U.S. Department of Energy, EM-4.31, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586-2513, or to *William.Ostrum@hq.doe.gov*.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The *Mercury Export Ban Act of 2008* (Pub. L. 110-414) and the 2016 *Frank R. Lautenberg Chemical Safety for the 21st Century Act* (Pub. L. 114-182) (all together referred to as MEBA), amended the *Toxic Substances Control Act* (TSCA; 15 U.S.C. 2601–2629) and the *Resource Conservation and Recovery Act* (RCRA; 42 U.S.C. 6939f) to address, among other things, the export and long-term management and storage of elemental mercury. MEBA prohibits the sale, distribution, or transfer by Federal agencies to any other Federal agency, any state or local government agency, or any private individual or entity, of any elemental mercury under the control or jurisdiction of a Federal agency (with certain limited exceptions). MEBA also amended section 266(c) of TSCA to prohibit the export of elemental mercury from the United States (with certain limited exceptions). MEBA directs DOE to designate a facility (or facilities) of DOE for the long-term management and storage of elemental mercury generated within the United States. MEBA further provides the Secretary of Energy with the authority to establish such terms, conditions, and procedures as are necessary to carry out this long-term management and storage function. Although the phrase “facility (or facilities) of [DOE]” is not

defined in MEBA, DOE has a longstanding practice in various other contexts of leasing facilities to accomplish the Department's core mission. Consistent with that practice, DOE construes the term "facility of DOE" to include a facility leased from a commercial entity or by another Federal agency over which the Department provides an appropriate level of oversight and guidance. Accordingly, if DOE were to designate a facility that currently is owned by a commercial entity or by another Federal agency, DOE would obtain an appropriate leasehold interest in that facility to comply with MEBA. DOE would ensure that any such facility currently owned by a commercial entity or by another Federal agency would afford DOE an appropriate level of responsibility and control over the facility.

The primary sources of elemental mercury in the United States include mercury generated as a byproduct of the gold-mining process and mercury reclaimed from recycling and waste recovery activities. In addition, DOE National Nuclear Security Administration (NNSA) stores approximately 1,200 metric tons of elemental mercury at the Oak Ridge Reservation in Tennessee, which was generated in support of NNSA's mission.

The 2011 Mercury Storage EIS evaluated seven candidate locations for the elemental mercury storage facility, as well as a No-Action Alternative. The locations included new facility construction, use of existing facilities, or both. The candidate locations evaluated in 2011 were: DOE Grand Junction Disposal site near Grand Junction, Colorado (new construction); DOE Hanford Site near Richland, Washington (new construction); Hawthorne Army Depot near Hawthorne, Nevada (existing facilities); DOE Idaho National Laboratory near Idaho Falls, Idaho (new construction and an existing facility); Kansas City Plant in Kansas City, Missouri (existing facility); DOE Savannah River Site near Aiken, South Carolina (new construction); and the Waste Control Specialists LLC (WCS) site near Andrews, Texas (new construction and an existing facility).

The 2013 Mercury Storage SEIS evaluated three additional alternative locations, all in the vicinity of the Waste Isolation Pilot Plant near Carlsbad, New Mexico (all new construction). The 2013 Mercury Storage SEIS also updated some of the relevant analyses for alternatives presented in the 2011 Mercury Storage EIS.

For the 2011 Mercury Storage EIS and the 2013 Mercury Storage SEIS, DOE estimated that up to approximately 10,000 metric tons of elemental mercury would need to be managed and stored at the DOE facility during the 40-year period of analysis.

On December 6, 2019, DOE issued a Record of Decision (ROD) to document its designation of the WCS site near Andrews, Texas, for the management and storage of up to 6,800 metric tons of elemental mercury in leased portions of existing buildings at the WCS site (84 FR 66890). The ROD was supported by DOE's *Supplement Analysis of the Final Long-Term Management and Storage of Elemental Mercury Environmental Impact Statement* (DOE/EIS-0423-SA-1), which determined that the long-term management and storage of up to 6,800 metric tons of elemental mercury in existing buildings at the WCS site would not constitute a substantial change from the proposal evaluated in the 2011 Mercury Storage EIS and updated in the 2013 Mercury Storage SEIS. On December 23, 2019, DOE published its rule to establish the fee for long-term management and storage of elemental mercury (84 FR 70402; the "Fee Rule").

Two domestic generators of elemental mercury subsequently filed complaints in United States District Court challenging, among other things, the validity of the Fee Rule and the ROD (*Coeur Rochester, Inc. v. Brouillette et al.*, Case No. 1:19-cv-03860-RJL [D.D.C. filed December 31, 2019] and *Nevada Gold Mines LLC v. Brouillette et al.*, Case No. 1:20-cv-00141-RJL [D.D.C. filed January 17, 2020]). On August 21, 2020, DOE and Nevada Gold Mines LLC executed a settlement agreement that resolved Nevada Gold Mines' lawsuit. Consistent with that agreement, on September 3, 2020, DOE filed a motion in the District Court asking the Court to

vacate and remand the Fee Rule. The District Court granted the motion to vacate and remand the Fee Rule on September 5, 2020. Given the rulemaking process required to establish a fee for the long-term management and storage of elemental mercury, and the expiration of DOE's lease with WCS in June 2021, DOE also agreed in the settlement with Nevada Gold Mines to withdraw the designation of WCS. DOE subsequently withdrew the designation of WCS under MEBA in an amended ROD on October 6, 2020 (85 FR 63105). On April 25, 2021, the District Court signed a joint stipulation to dismiss Coeur Rochester, Inc.'s lawsuit.

## **II. Purpose and Need for Action**

MEBA established January 1, 2019, as the date by which a DOE facility for the long-term management and storage of elemental mercury generated within the United States must be operational. MEBA requires that DOE adjust fees for generators temporarily accumulating elemental mercury if the DOE facility is not operational by January 1, 2019. If the DOE facility is not operational by January 1, 2020, DOE must: (1) immediately accept the conveyance of title to all elemental mercury that has accumulated on site prior to January 1, 2020,<sup>1</sup> (2) pay any applicable Federal permitting costs, and (3) store, or pay the cost of storage of, until the time at which a facility is operational, accumulated mercury to which the Secretary has title in a facility that has been issued a permit. Because statutory milestone dates have now passed, DOE needs to designate a facility and begin accepting elemental mercury as soon as practicable.

## **III. Proposed Action**

DOE proposes to designate one or more facilities for the long-term management and storage of elemental mercury in accordance with MEBA. Facilities must comply with applicable requirements of section 5(d) in MEBA, "Management Standards for a Facility," including the requirements of the *Solid Waste Disposal Act* as amended by RCRA, and other state-specific permitting requirements. Consistent with the Supplement Analysis prepared in 2019 but updated

---

<sup>1</sup> Conveyance of title pertains to mercury accumulated in accordance with 42 U.S.C. 6939f(g)(2)(D).

to account for accumulation of elemental mercury since then, the SEIS-II evaluates the potential environmental impacts of an estimated inventory of up to 7,000 metric tons of elemental mercury that could require management and storage during the 40-year period of analysis.

After completion of DOE's Proposed Action, DOE would establish the fee for long-term management and storage of elemental mercury through a rulemaking conducted pursuant to the *Administrative Procedure Act* (5 U.S.C. 551 *et seq.*). DOE would evaluate the potential environmental impacts of the rulemaking in accordance with NEPA implementing procedures at 10 CFR part 1021 at that time.

#### **IV. Proposed Alternatives**

The Mercury Storage SEIS-II evaluates the potential environmental impacts associated with implementation of the Proposed Action in existing facilities at the following reasonable alternative locations:

- Hawthorne Army Depot in Hawthorne, Nevada;
- WCS in Andrews County, Texas;
- Bethlehem Apparatus in Bethlehem, Pennsylvania;
- Perma-Fix Diversified Scientific Services, Inc., in Kingston, Tennessee;
- Veolia North America in Gum Springs, Arkansas; and
- Clean Harbors (facilities in Pecatonica, Illinois; Greenbrier, Tennessee; and Tooele, Utah).

DOE has also updated the analysis of the No-Action Alternative.

For each of the above alternative locations, the Mercury Storage SEIS-II provides an evaluation of the potential environmental impacts for the following resource areas: land use and ownership, and visual resources; geology, soils, and geologic hazards; water resources; air quality and noise; ecological resources; cultural and paleontological resources; site

infrastructure; waste management; occupational and public health and safety (including normal operations, facility accidents, transportation, and intentional destructive acts); socioeconomics; and environmental justice. The SEIS-II also includes a description of reasonably foreseeable environmental trends and planned actions within the region of influence for each alternative site. The SEIS-II evaluates the potential cumulative impacts of actions that have a reasonably close causal relationship or that occur at the same time and place as the Proposed Action.

In the 2011 Mercury Storage EIS and the 2013 Mercury Storage SEIS, DOE identified the WCS alternative as the preferred alternative. DOE no longer has a specific preferred alternative. However, DOE does prefer one or more of the alternative locations with existing commercial facilities because selection of one or more of these facilities would best address DOE's schedule urgency established by MEBA.

## **V. Public Participation in the NEPA Process**

DOE has published the Draft Mercury Storage SEIS-II on the internet at:

*<https://www.energy.gov/nepa/doeeis-0423-s2-supplemental-environmental-impact-statement-long-term-management-and-storage>*. Additionally, DOE has scheduled two web-based public hearings to allow DOE to present information about the Draft SEIS-II and to receive oral comments from the public. The first hearing will be held on August 2, 2022, from 12:00 p.m. to 2:00 p.m. EDT. The second hearing will be held on August 4, 2022, from 1:00 p.m. to 3:00 p.m. EDT. Registration details are included below and are also available on the DOE website for long-term management and storage of elemental mercury (*<https://www.energy.gov/em/long-term-management-and-storage-elemental-mercury>*). If you are joining the web-based public hearing via the internet (the preferred approach), use the link below to log in to the Zoom Meeting Room. If you are joining the web-based public hearing via phone, dial the number below and follow the prompts. Documents and the presentation for the public hearing will be made available on the DOE website for long-term management and storage of elemental mercury



(<https://www.energy.gov/em/long-term-management-and-storage-elemental-mercury>). Persons who wish to provide oral comments at the hearing may sign up either before the hearing by submitting a request to [Julia.Donkin@em.doe.gov](mailto:Julia.Donkin@em.doe.gov) (preferred approach) or during the meeting. To join the first web-based public hearing (August 2, 2022) via Zoom Meeting Room: <https://em-doe.zoomgov.com/j/1608025687?pwd=Zndsbkp6THA4V2lFdXE3ZGExclF6Zz09> (copy and paste into web browser).

To join the second web-based public hearing (August 4, 2022) via Zoom Meeting Room: <https://em-doe.zoomgov.com/j/1608025687?pwd=Zndsbkp6THA4V2lFdXE3ZGExclF6Zz09> (copy and paste into web browser).

### **Signing Authority**

This document of the U.S. Department of Energy was signed on June 27, 2022, by William I. White, Senior Advisor for Environmental Management, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with the requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the U.S. Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on June 30, 2022.

---

Treena V. Garrett,  
Federal Register Liaison Officer,  
U.S. Department of Energy.

[FR Doc. 2022-14388 Filed: 7/7/2022 8:45 am; Publication Date: 7/8/2022]